IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3314 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHESH CAST

Versus

UNION OF INDIA

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR DN PATEL, Sr.Central Govt.Standing Counsel for Respondents

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CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 15/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

Rule. Mr.D.N.Patel, learned Sr.Central Govt.Standing Counsel for the respondents waives service of Rule.

2. Heard learned Counsel for the parties.

The petitioner in this petition has challenged the impugned order passed by the Deputy Commissioner of Customs (Gr.VII), Kandla, respondent no.4 herein, on the ground that by the impugned order, respondent no.4 has curtailed the period of limitation as provided under Section 128(1) of the Customs Act, 1962 and has also by implication, has taken away the discretion provided to the Appellate Authority, i.e. the Commissioner (Appeals) under Section 129E of the Act.

It is the grievance of the petitioner that as per the impugned order, the Bank Guarantee will be encashed after two weeks from the date of issuance of the of the order, i.e. 1.3.2002 which is served to the petitioner only on 11.3.2002, with the result petitioner is not in a position to avail the remedy of appeal effectively.

3. In view of the fact that the remedy of filing of appeal before the Commissioner (Appeals) under Section 129E of the Act is available to the petitioner and as per the said provision, the Commissioner has also discretion to dispense with the deposit of the amount of duty and to pass appropriate orders, we relegate the petitioner to approach the Appellate Authority by modifying Clause (4) of the impugned order to the effect that the Bank Guarantee be encashed against recovery of differential amount of duty arising out of final assessment after two weeks from the date of service of the impugned order.

4. Mr.Thakkar states that the appeal shall be filed before the Appellate Authority within a period of one week from today. It is needless to mention that as and when such proceedings are taken, the Appellate Authority shall pass appropriate orders in accordance with law.

5. This petition is allowed to the aforesaid extent. Rule is made absolute accordingly. No order as to costs. Direct service today is permitted.

(Kshitij R. Vyas, J.)

(Ravi R.Tripathi, J.)

Sreeram.